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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JEFF E. WALKER,
12 CDCR # F-11343,

13 Plaintiff,

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15 vs.
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17 C/O HUBERT; C/O MOORE;
18 SGT. LUNA; LT. ACUNA;
19 C/O LABACO; C/O MURPHY;
20 NURSE DONOHUE; JOHN AND JANE
21 DOES,

22 Defendants.
23

Civil No. 14cv0788 BTM (KSC)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO
28 U.S.C. § 1915(a)**

24 Plaintiff, currently incarcerated at the Richard J. Donovan Correctional Facility
25 located in San Diego, California, and proceeding pro se, has filed a civil action pursuant
26 to 42 U.S.C. § 1983, along with a Motion entitled “Request TRO/Injunction under
27 ‘Imminent Danger’ Expedite due to Life in Danger in this Prison.” (ECF Doc. Nos. 1,
28 2.)

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I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a party's failure to pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

Plaintiff has not prepaid the \$400 in filing and administrative fees required to commence a civil action, nor has he submitted a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a). Therefore, the case cannot yet proceed. *See* 28 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

II. Motion for Temporary Restraining Order

At this time, the Court will defer ruling on Plaintiff's Motion for Temporary Restraining Order. If Plaintiff pays the filing fee or properly files a Motion to Proceed IFP, the Court will rule on Plaintiff's Motion. The actions complained of in Plaintiff's Complaint are alleged to have occurred in January of 2014 but the Motion fails to clearly articulate what the current "imminent danger" Plaintiff is facing.

In addition, the Court takes judicial notice that Plaintiff has filed seventeen civil rights actions since 2008 in the Central, Eastern and Northern Districts of California. A court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). If Plaintiff chooses to file a Motion to Proceed IFP, he may be barred by 28 U.S.C. § 1915(g).

¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50 administrative fee is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 **III. Conclusion and Order**

2 For the reasons set forth above, the Court hereby:

3 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the
4 \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to
5 28 U.S.C. §§ 1914(a) and 1915(a); and

6 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is
7 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; **or**
8 (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust
9 account statement for the 6-month period preceding the filing of his Complaint. *See* 28
10 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

11 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
12 with this Court's approved form "Motion and Declaration in Support of Motion to
13 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee
14 or complete and submit the enclosed Motion to Proceed IFP within that time, this action
15 shall remain dismissed without prejudice and without further Order of the Court.

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17 DATED: April 10, 2014

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19 BARRY TED MOSKOWITZ, Chief Judge
20 United States District Court
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